

REMARKS

Claims 1-7 and 15-19 are pending in the present application. Claims 1-7 and 15-19 are rejected on the ground of nonstatutory obviousness-type double patenting. Applicants respectfully request reconsideration of the application, withdrawal of all rejections, and allowance of the application in view of the amendments and remarks below.

Double Patenting

Claims 1-7 and 15-19 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of United States Patent No. 7,090,830, and United States Application Serial Nos. 10/057,197; 10/057,198; and 10/437,643.

Terminal Disclaimers with respect to United States Patent No. 7,090,830, and United States Application Serial Nos. 10/057,197; 10/057,198; and 10/437,643 are submitted herewith.

Applicants believe that the filing of these Terminal Disclaimers addresses the Examiner's concerns and respectfully request reconsideration of the application, withdrawal of all rejections, and allowance of the application in view of these actions and remarks.

Claims 1-7 and 15-19 also have been provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims of copending Application No. 10/633,876 ("the '876 application"). Office Action at 4. According to the Manual of Patent Examining Procedure (Rev. 5, Aug. 2006) ("MPEP") even if there are conflicting claims in more than one application, "[t]he 'provisional' double patenting rejection should continue to be made by the examiner in each application * * * unless that "provisional" double patenting rejection is the only rejection remaining in at least one of the applications." MPEP § 804 I.B. (emphasis added). The double patenting rejection is the only rejection remaining in the present case while the '876 application has been examined only to the extent of a restriction requirement. Thus, Applicants submit that under these circumstances the Examiner should withdraw the double patenting rejection and permit the present application to issue as a patent. *See* MPEP § 804 I.B.

Conclusion

The Applicants appreciate the Examiner's careful and thorough review of the application and submit that the Examiner's concerns have been addressed by the remarks above. The Applicants accordingly request the Examiner to withdraw all rejections and allow the application. In the event the Examiner believes a telephonic discussion would expedite allowance or help to resolve outstanding issues relating to the prosecution of the application, then the Examiner is invited to call the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to Deposit Account No. 19-5117, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to Deposit Account No. 19-5117.

Respectfully submitted,

Date: October 10, 2008

/Katherine Lobel-Rice/
Katherine Lobel-Rice, #58,079
Swanson & Bratschun, L.L.C.
8210 SouthPark Terrace
Littleton, Colorado 80120
Telephone: (303) 268-0066
Facsimile: (303) 268-0065